

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LISA DOMSKI,

Plaintiff,

v.

Case Number 23-12023  
Honorable David M. Lawson

BLUE CROSS BLUE SHIELD OF  
MICHIGAN,

Defendant.

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**JOINT FINAL PRETRIAL ORDER**

The following shall govern the course of trial unless modified by further order of the Court.  
Fed. R. Civ. P. 16(d). This order is based on the pleadings and the parties' pretrial submissions.

**I. Jurisdiction.** This Court has original jurisdiction over the plaintiffs' federal claims arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* in accordance with 28 U.S.C. § 1331. Under 28 U.S.C. § 1367, this Court has supplemental jurisdiction over the plaintiffs' state law claims. Jurisdiction is not contested by the defendant.

**II. Statement of the Plaintiff's Claims.** Plaintiff Lisa Domski alleges that she worked for defendant Blue Cross Blue Shield of Michigan for 32 years. In 2017, Ms. Domski was promoted to IT Process Specialist II. On November 1, 2021, the defendant instituted a COVID-19 vaccination mandate for all employees, including those who worked remotely. On November 10, 2021, Ms. Domski submitted a religious accommodation request to be exempt from the defendant's COVID-19 vaccine mandate. Ms. Domski contends that her request was based on her religious beliefs emanating from her Catholic faith that included her pro-life principles that prevented her from receiving the COVID-19 vaccine that she believed was developed with research on cells that were derived from aborted fetuses. The plaintiff submitted a religious

exemption request that referenced scripture and excerpts from the Bible in support of her religious beliefs and explained that she was concerned that it would be “a terrible sin” for her to receive the COVID-19 vaccine and that doing so would “distance [her] relationship with God.” On December 2, 2021, Defendant placed Ms. Domski on an unpaid leave of absence and terminated her on January 5, 2022 “for failure to comply with the COVID vaccine requirement.”

Ms. Domski alleges violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (Title VII) and the Elliott-Larsen Civil Rights Act (“ELCRA”), Mich. Comp. Laws § 37.2101 et. seq., contending that the defendant’s failure or refusal to accommodate her religious beliefs was unreasonable and unlawful, and the defendant treated her differently than other similarly situated employees based on her religion.

**III. Statement of Defendant’s Defenses.** On October 31, 2021, defendant Blue Cross Blue Shield of Michigan adopted for its employees a mandatory, COVID-19 vaccination policy (“Policy”), requiring all employees to be fully vaccinated by January 4, 2022, but it allowed employees to apply for and, if appropriate, receive a religious or medical accommodation to the Policy by that date, to avoid being separated from the company on January 5, 2022. The plaintiff requested an accommodation to be exempt from the defendant’s Policy.

On December 1, 2021, the plaintiff was scheduled to participate in an interview with the defendant to discuss her accommodation request and elaborate upon her objections to the COVID-19 vaccine. During the scheduled interview, the plaintiff declined to participate, informing the defendant’s interviewer-decision makers that she would rely on the letter she submitted.

The plaintiff’s accommodation request was denied based upon the particularized facts presented to the defendant’s interviewer-decision makers, as applied against guidance from the Equal Employment Opportunity Commission, who were tasked with determining whether the

plaintiff sincerely held a religious belief that would excuse her from receiving the COVID-19 vaccine. The plaintiff thereafter failed to comply with the Policy by refusing to obtain the vaccine. Therefore, pursuant to the Policy, the plaintiff's employment was terminated on January 5, 2022.

**IV. Stipulation of Facts.** The parties agree that the following facts are established, and no proofs need be offered at trial:

1. On October 31, 2021, the defendant announced a COVID-19 vaccine mandate.
2. Lisa Domski submitted a written religious accommodation request to the defendant on November 10, 2021.
3. The defendant denied Lisa Domski's religious accommodation request.
4. The defendant placed Lisa Domski on unpaid leave on December 5, 2021.
5. On January 5, 2022, the defendant terminated the plaintiff as a result of her failure to comply with the defendant's COVID-19 vaccination policy.

**V. Issues of Fact to be Litigated.**

1. Whether the plaintiff holds a sincerely held religious belief that prevents her from receiving the COVID-19 vaccine.
2. Whether the plaintiff communicated to the defendant a sincerely held religious belief in conflict with COVID-19 vaccination.
3. Whether the defendant failed to accommodate the plaintiff's religious beliefs.
4. Whether the defendant discriminated against the plaintiff because of her religious beliefs.
5. Whether the plaintiff cooperated in the interactive accommodation process.

6. Whether the defendant had an honest belief in the non-discriminatory reason for its termination of the plaintiff.

7. The amount of economic damages.

8. The amount of non-economic damages.

9. The amount of punitive damages.

#### **VI. Issues of Law to be Litigated.**

1. Does the defendant's "honest belief" rule constitute an affirmative defense to a religious discrimination claim?

2. Must the plaintiff prove that the defendant-employer had "actual notice" of every aspect of an employee's religious belief?

3. Did the plaintiff exhaust her administrative remedies with the EEOC when she submitted a timely charge of discrimination on February 11, 2022 and received a Notice of Right to Sue Letter on July 29, 2024 after she had filed her complaint in this case?

4. Must the plaintiff prove that she cooperated in the interactive accommodation process to establish her discrimination claims?

5. Must the plaintiff prove that she was replaced by a person outside of her allegedly protected class?

6. Can the defendant be held liable for discriminating against the plaintiff on the basis of beliefs she never communicated to the defendant?

#### **VII. Evidence Problems Likely to Arise at Trial.**

1. Whether the defendant may assert the attorney-client privilege to prevent the plaintiff from calling as a witness Rudolph Makupson, an in-house attorney for the defendant who has filed an appearance in this case.

2. Whether the defendant has waived the attorney-client privilege.

3. Whether the defendant will be able to establish a foundation to introduce evidence that its decision-makers could rely on a belief that aspirin, tylenol, and sudafed were developed with fetal stem cells in the “same fashion” as the COVID-19 vaccine.

4. Whether the plaintiff may offer physical evidence at trial that was not disclosed timely under the mandatory disclosure rules.

5. Whether the plaintiff may call as witnesses Rudolph Makupson and Jana Lance as a rebuttal witness when they were not disclosed timely under the mandatory disclosure rules.

6. Whether the testimony of proposed witnesses Rudolph Makupson and Jana Lance is relevant if they were not involved with the specific decision on the plaintiff’s request for a religious accommodation.

7. Whether the plaintiff may call as a witness the defendant’s CEO, Dan Loepp, when the ostensible subpoena relative to Mr. Loepp is invalid, Mr. Loepp was not involved relative to the plaintiff’s request for an accommodation interview.

### **VIII. Witnesses**

A. The plaintiff will call the following witnesses in person with the estimated designated time for direct examination:

1. Lisa Domski — 2 hours.
2. Rev. Canon Walter J. Ptak — 15 minutes.
3. Dawn Rodriguez — 15 minutes.
4. Jill Fortener — 15 minutes.
5. Mark Keller — 15 minutes.

6. Alyse Domski — 15 minutes.
7. Larry Domski — 15 minutes.
8. Jeffery Walters — 1 hour.
9. Patricia Snyder — 1 hour.

B. The plaintiff may call the following witnesses in person with the estimated designated time for direct examination:

The plaintiff may call:

10. Daniel J. Loepp — 30 minutes.
11. Bert Feinbaum — 30 minutes.
12. Rudy Makupson — 30 minutes.
13. Jana Lance — 30 minutes.
14. Audre Lidtke — 30 minutes.
15. Amerique Dockery — 30 minutes.
16. Devin Scott — 30 minutes.
17. Kaitlyn Mardeusz — 30 minutes.

C. The defendant will call the following witnesses in person with the estimated designated time for direct examination:

1. Jeffrey Walters — 1 hour.
2. Patricia Snyder — 1 hour.
3. Bart Feinbaum — 1 hour.

**IX. Exhibits.** Subject to pretrial rulings, the parties may offer the following exhibits:

## A. Plaintiff:

Exhibit No.	Description	Bates Label	Date Produced in Discovery	Date Offered for Trial	Objected To	Received
1.	Accommodation Request Denial	BCBSM0042857-BCBSM0042859	Sept. 2023	Aug. 12, 2024		
2.	Non-Compliance Leave Initiation	BCBSM0043132-BCBSM0043133	Sept. 2023	Aug. 12, 2024		
3.	Non-Compliance Leave Communication	BCBSM0043596-BCBSM0043597	Sept. 2023	Aug. 12, 2024		
4.	Non-Compliance Termination	BCBSM00443706-BCBSM0043707	Sept. 2023	Aug. 12, 2024		
5.	Termination Communication	BCBSM0043959-BCBSM0043960	Sept. 2023	Aug. 12, 2024		
6.	2011 Offer Letter	BCBSM0062243-BCBSM0062244	Sept. 2023	Aug. 12, 2024		
7.	2014 Internal Transfer	BCBSM0062245	Sept. 2023	Aug. 12, 2024		
8.	2017 Internal Transfer	BCBSM0062246	Sept. 2023	Aug. 12, 2024		
9.	January 5, 2022 Termination	BSBSM0062247	Sept. 2023	Aug. 12, 2024		
10.	2019 Performance Review	BCBSM0062250-BCBSM0062261	Sept. 2023	Aug. 12, 2024		
11.	2021 Performance Review	BCBSM0062264-BCBSM0062280	Sept. 2023	Aug. 12, 2024		
12.	Accommodation Request	BCBSM0070070-BCBSM0070071	Sept. 2023	Aug. 12, 2024		
13.	EEOC Charge	EDMI00033045-00033047	Nov. 28, 2023	Aug. 12, 2024		
14.	Work History Application	EDMI00033048-00033050	Nov. 28, 2023	Aug. 12, 2024		
15.	Accommodation Interview Transcript	EDMI00033051-00033053	Nov. 28, 2023	Aug. 12, 2024		

16.	2019 City of Detroit Tax Withholding	EDMI00033060-00033061	Nov. 28, 2023	Aug. 12, 2024		
17.	2019 City of Detroit Nonresident Tax Return	EDMI00033062-00033064	Nov. 28, 2023	Aug. 12, 2024		
18.	2019 Michigan Tax Withholding Schedule	EDMI00033065-00033066	Nov. 28, 2023	Aug. 12, 2024		
19.	2019 Michigan Tax Return	EDMI00033067-00033068	Nov. 28, 2023	Aug. 12, 2024		
20.	2019 Federal Tax Return	EDMI00033071-00033072	Nov. 28, 2023	Aug. 12, 2024		
21.	2020 City of Detroit Tax Withholding	EDMI00033073-00033074	Nov. 28, 2023	Aug. 12, 2024		
22.	2020 City of Detroit Nonresident Tax Return	EDMI00033075-00033077	Nov. 28, 2023	Aug. 12, 2024		
23.	2020 Michigan Tax Withholding Schedule	EDMI00033078	Nov. 28, 2023	Aug. 12, 2024		
24.	2020 Michigan Tax Return	EDMI00033079-00033080	Nov. 28, 2023	Aug. 12, 2024		
25.	2020 Federal Tax Return	EDMI00033087	Nov. 28, 2023	Aug. 12, 2024		
26.	2021 City of Detroit Tax Withholding	EDMI00033089-00033090	Nov. 28, 2023	Aug. 12, 2024		
27.	2021 City of Detroit Nonresident Tax Return	EDMI00033091-00033093	Nov. 28, 2023	Aug. 12, 2024		
28.	2021 Michigan Tax Return	EDMI00033100-00033101	Nov. 28, 2023	Aug. 12, 2024		
29.	2021 Michigan Tax Withholding Schedule	EDMI00033099	Nov. 28, 2023	Aug. 12, 2024		
30.	2021 Federal Tax Return	EDMI00033108	Nov. 28, 2023	Aug. 12, 2024		



31.	2022 City of Detroit Tax Withholding	EDMI00033111-00033112	Nov. 28, 2023	Aug. 12, 2024		
32.	2022 City of Detroit Nonresident Tax Return	EDMI00033113-00033115	Nov. 28, 2023	Aug. 12, 2024		
33.	2022 Michigan Tax Withholding Schedule	EDMI00033123	Nov. 28, 2023	Aug. 12, 2024		
34.	2022 Michigan Tax Return	EDMI00033124-00033125	Nov. 28, 2023	Aug. 12, 2024		
35.	2022 Federal Tax Return	EDMI00033139	Nov. 28, 2023	Aug. 12, 2024		
36.	Earnings Statement	EDMI00033148-00033176	Nov. 28, 2023	Aug. 12, 2024		
37.	Ward Evangelical Paycor	EDMI00033177-00033181	Nov. 28, 2023	Aug. 12, 2024		
38.	Plaintiff's Resumes	EDMI00033182-00033185	Nov. 28, 2023	Aug. 12, 2024		
39.	Plaintiff's Cover Letters	EDMI00033186-00033187	Nov. 28, 2023	Aug. 12, 2024		
40.	Habitat for Humanity Application	EDMI00033188	Nov. 28, 2023	Aug. 12, 2024		
41.	Henry Ford Employment Communication	EDMI00033189-00033191	Nov. 28, 2023	Aug. 12, 2024		
42.	Ward Church Employment	EDMI00033192	Nov. 28, 2023	Aug. 12, 2024		
43.	Plaintiff's Application	EDMI00033194-00033201	Nov. 28, 2023	Aug. 12, 2024		
44.	American Faith Letter	EDMI00033206-00033207	Nov. 28, 2023	Aug. 12, 2024		
45.	Facebook Social Media Post	EDMI00033213	Nov. 28, 2023	Aug. 12, 2024		
46.	Human Resources Recording	WDMI0024104	Sep. 7, 2023	Aug. 12, 2024		
47.	Religious Accommodation Interview Notes	BCBSM0023635-BCBSM0023636	Sept. 2023	Aug. 12, 2024		

48.	EEOC Right to Sue Letter	Produced by EEOC July 29, 2024		Aug. 12, 2024	Yes. Plaintiff has not produced this document	
49.	Retirement Account Summary	Produced: September 15, 2023	Sept. 2023	Aug. 12, 2024		
50.	Tricia Keith Video	Produced: September 10, 2023	Sept. 2023	Aug. 12, 2024	Yes. <i>See</i> ECF No. 37  FRE 402, 403; FRCP 37(c)	
51.	Tammy Dial Accommodation Request	BCBSM0030250-BCBSM0030253	Sept. 2023	Aug. 12, 2024		
52.	Tammy Dial Interview Notes	BCBSM0030029-BCBSM0030031	Sept. 2023	Aug. 12, 2024		
53.	Rick Dial Accommodation Request	Defendant possesses record		Aug. 12, 2024		
54.	HR Recording Transcript	WDMI0024104	Sept. 2023	Aug. 12, 2024		
55.	Catechism of the Catholic Church	Public Record	Sep. 10, 2024	Aug. 27, 2024	Yes. <i>See</i> ECF Nos. 33, 35  FRE 402, 403; FRCP 37(c)	
56.	Catechism of the Catholic Church pt. 2	Public Record	Sep. 10, 2024	Aug. 27, 2024	Yes. <i>See</i> ECF Nos. 33, 35  FRE 402, 403; FRCP 37(c)	

57.	Letters to Pharmaceutical Companies	Public Record	Sep. 10, 2024	Aug. 27, 2024	Yes. <i>See</i> ECF Nos. 33, 35  FRE 402, 403; FRCP 37(c)	
58.	Secretariat Conscience Exemption Letter	Public Record	Sep. 10, 2024	Aug. 27, 2024	Yes. <i>See</i> ECF Nos. 33, 35  FRE 402, 403; FRCP 37(c)	
59.	Instruction Dignitas Personae	Public Record	Sep. 10, 2024	Aug. 27, 2024	Yes. <i>See</i> ECF Nos. 33, 35  FRE 402, 403; FRCP 37(c)	
60.	Administrator, George Rieveschl, Inventor of Benadryl, Dies (Sep. 27, 2007)	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 403, 801(c)	
61.	Community Invited to Free Christmas Dinner In Taylor, CBS News (2011)	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 403, 801(c)	
62.	Confirmation Certificate	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 403	

63.	Covid-19 Vaccines & Fetal Cells, MDHHS	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 403, 801(c)	
64.	Dave Gorgon, “True meaning of Christmas” dinner, The News Herald (2019)	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 403, 801(c)	
65.	Domski family hosting annual free dinner, Times-Herald Newspapers (2013)	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 403, 801(c)	
66.	Extraordinary Minister of Holy Communion Certificate	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 403	
67.	FAQs About TYLENOL®	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 801(c)	

68.	FDA Sends Claritin Over the Counter, CNN (Nov. 27, 2002)	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 801(c)	
69.	Health COVID-19 Vaccine Addressing Concerns, UCLA (Sep. 4, 2024)	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 403, 801(c)	
70.	History of Fetal Tissue Research and Transplants, Charlotte Lozier Institute (Nov. 30, 2016)	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 403, 801(c)	
71.	History of Stem Cell Use, University of Nebraska Medical Center	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 403, 801(c)	
72.	Ibuprofen History, West Virginia University	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 801(c)	

73.	Jessica D'Alfonso, Domski family does it again, The News Herald (2018)	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 403, 801(c)	
74.	Justin Brumbaugh, Brian A. Aguado, Tamra Lysaght, Lawrence S.B. Goldstein, Stem Cell Reports (Dec. 13, 2023)	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 403, 801(c)	
75.	Maria Rosa Montinari; Sergio Minelli; Raffaele De Caterina, The first 3500 Years of Aspirin History from its Roots- A Concise Summary (Sep. 4, 2024)	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 801(c)	
76.	Motrin and Ibuprofen FAQs	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 801(c)	
77.	Setting the Stage Fetal Research, Fetal Tissue Research, and Historical Timeline of Regulation and Legislation, National Library of Medicine	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 403, 801(c)	

78.	SUDAFED® Frequently Asked Questions (FAQ) SUDAFED®	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 801(c)	
79.	The 2017 “True Meaning of Christmas” dinner, City of Taylor.	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 403, 801(c)	
80.	The History of Pepto Bismol, Pepto Bismol	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 801(c)	
81.	True Meaning of Christmas Dinner, Explore Taylor, M	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 403, 801(c)	
82.	TUMS- America's #1 Heartburn Medicine.	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 801(c)	

83.	You Asked, We Answered Do the COVID-19 Vaccines Contain Aborted Fetal Cells Nebraska Medicine (Aug. 18, 2021)	Public Record	Sep. 10, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 403, 801(c)	
84.	Lisa Domski Photos	EDMI00035444-00035468	Sep. 13, 2024	Sep. 10, 2024	Yes. <i>See</i> ECF No. 53  FRCP 37(c); FRE 402, 403, 801(c)	
85.	2020 NBU Performance Review Lisa Domski 12.15.2020	EDMI00035472	Nov. 28, 2023	Oct. 8, 2024	Yes. FRCP 37(c)	
86.	Certificates of Achievement	EDMI00035464; EDMI00035473	Nov. 28, 2023	Oct. 8, 2024	Yes. FRCP 37(c)	
87.	Grigorian Email 11.18.21	BCBSM0004157	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
88.	Grigorian Email 11.19.21	BCBSM0004571	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
89.	Lance Email 12.3.21	BCBSM0005105	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
90.	Tracy Email 11.18.21	BCBSM0015089	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
91.	Pie Chart	BCBSM0003443	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
92.	Walters Email 8.18.22	BCBSM0008559	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
93.	Walters Email 10.29.21	BCBSM0021570-21572	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
94.	Domski Email 12.2.21	BCBSM0070075	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	



95.	Loepp Communication 12.7.21	BCBSM0001063	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
96.	Driessche Email 11.23.21	BCBSM0054841- 54843	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
97.	Walters Email 2.18.22	BCBSM0006664- 0006669	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
98.	FW: Greg Zdyrski Religious Accommodation Request	BCBSM0075698	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
99.	Walters Email 12.2.21	BCBSM0005922- 5923	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
100.	Walters Email 11.18.21	BCBSM0013889- 13890	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
101.	Henderson Email 10.5.22	BCBSM0016449	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
102.	Owens Email 6.15.22	BCBSM0016187- 0016189	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
103.	Beaverson Email 7.21.22	BCBSM0057709	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
104.	Witherspoon Email 10.14.22	BCBSM0020079- 0020081	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
105.	Beaverson Email 8.11.22	BCBSM0057710	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
106.	Mylek Email 10.25.22	BCBSM0007009- 0007011	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
107.	Byars Email 11.2.21	BCBSM0013098- 0013105	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
108.	Beaverson Email 1.25.22	BCBSM0002810- 0002812	Sept. 2023	October 7, 2024	Yes. FRCP 37(c)	
109.	Emerson Email 12.8.21	BCBSM0003634- 0003635	Sept. 2023	October 7, 2024	Yes. FRCP 37(c)	
110.	Grigorian Email 12.6.21	BCBSM0027128- 0027129	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	

111.	Grigorian Email 12.1.21	BCBSM0016366	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
112.	Driessche Email 2.2.22	BCBSM0003842- 0003844	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
113.	Walters Email 11.19.21	BCBSM0013889- 0013890	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
114.	Goheen Email 2.4.22	BCBSM0000012- 0000015	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
115.	Snyder Email 3.11.22	BCBSM0004254- 0004256	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
116.	King Email 10.22.21	BCBSM0003488- 0003489	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
117.	Loepp Communication 11.3.21	BCBSM0003501	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
118.	Owens Email 12.8.21	BCBSM0003747- 0003755	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
119.	Goheen Appeal 12.17.21	BSBSM0006873- 0006899	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
120.	Caldwell-Stoll Email 11.1.21	BCBSM0011446- 0011447	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
121.	Heikka Email 2.15.22	BCBSM0023622- 0023630	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
122.	Ross Email 11.2.21	BCBSM0004936- 0004937	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
123.	Snyder Email 10.27.21	BCBSM0021953- 0021954	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
124.	Feinbaum Email 11.29.21	BCBSM0027133- 0027135	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
125.	Feinbaum Email 10.11.21	BCBSM0003477- 0003480	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	

126.	Grigorian Email Religious Accommodation Request	BCBSM0034703	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
127.	Grigorian Email 11.16.21	BCBSM0004150	Sept. 2023	Oct. 7, 2024	Yes. FRCP 37(c)	
128.	2021.11.16 Lance Email	BCBSM0003704-07	Sept. 2023	Oct. 8, 2024	Yes. FRCP 37(c)	
129.	2021.11.18 Soulliere Email	BCBSM0012420	Sept. 2023	Oct. 8, 2024	Yes. FRCP 37(c)	
130.	2021.11.23 Walters Email	BCBSM0006584	Sept. 2023	Oct. 8, 2024	Yes. FRCP 37(c)	
131.	2021.12.03 Walters Email	BCBSM0008440	Sept. 2023	Oct. 8, 2024	Yes. FRCP 37(c)	

## B. Defendant:

Exhibit No.	Description	Bates Label	Date Offered for Trial	Objected To	Received
201.	Plaintiff's Application for Employment and Employee Agreement	BCBSM0062238-42	Aug. 12, 2024 (ECF No. 26)		
202.	BCBSM's Mandatory COVID-19 Vaccination Policy (the "Policy") Announcement	BCBSM0055563-65	Aug. 12, 2024 (ECF No. 26)		
203.	BCBSM's Additional Information on Policy	BCBSM0003494-97	Aug. 12, 2024 (ECF No. 26)		
204.	BCBSM's Extension of Deadline for Policy	BCBSM0038068-70	Aug. 12, 2024 (ECF No. 26)		
205.	Template Request for Religious Accommodation to the Policy	BCBSM0070085-86	Aug. 12, 2024 (ECF No. 26)	Yes. <i>See</i> ECF No. 40	
206.	Plaintiff's Request for Religious Accommodation to the Policy	BCBSM0070097-98	Aug. 12, 2024 (ECF No. 26)		

207.	BCBSM's Email Reminders to Plaintiff Regarding Approaching Policy Deadlines	BCBSM0070073–74, BCBSM0070115	Aug. 12, 2024 (ECF No. 26)		
208.	Email Communications on Rescheduling Interview	BCBSM0072929–31	Aug. 12, 2024 (ECF No. 26)		
209.	Plaintiff's Email Accepting Interview	BCBSM0070054	Aug. 12, 2024 (ECF No. 26)		
210.	Jeffrey Walters's Interview Notes	BCBSM0023635–36	Aug. 12, 2024 (ECF No. 26)		
211.	Bruce Henderson's Interview Notes	BCBSM0023637–38	Aug. 12, 2024 (ECF No. 26)		
212.	Plaintiff's Interview Notes	EDMI 00033051–53	Aug. 12, 2024 (ECF No. 26)		
213.	BCBSM's Email Denying Plaintiff's Religious Accommodation Request and Plaintiff's Response	BCBSM0042857–59	Aug. 12, 2024 (ECF No. 26)		
214.	Plaintiff's Email to American Faith News	EDMI 00033206	Aug. 12, 2024 (ECF No. 26)		
215.	BCBSM's Email Notifying Plaintiff of Her Unpaid Leave Effective December 15, 2021	BCBSM0043596–97	Aug. 12, 2024 (ECF No. 26)		
216.	Plaintiff's Termination Notice for Vaccine Requirement Non-Compliance	BCBSM0062247	Aug. 12, 2024 (ECF No. 26)		
217.	Plaintiff "Loving" Facebook Post	EDMI 00033213	Aug. 12, 2024 (ECF No. 26)		
218.	Plaintiff's Employee Information and History Report	BCBSM0062233–37	Aug. 12, 2024 (ECF No. 26)		
219.	Plaintiff's Tax Documents	EDMI 00033060–143	Aug. 12, 2024 (ECF No. 26)		
220.	Plaintiff's Earnings Statements	EDMI 00033144–81	Aug. 12, 2024 (ECF No. 26)		

221.	Plaintiff's Job Search	EDMI 00033182–205	Aug. 12, 2024 (ECF No. 26)		
222.	Plaintiff's Job Description	BCBSM0062248–49	Aug. 12, 2024 (ECF No. 26)		
223.	Plaintiff's Performance Reviews	BCBSM0062250–80	Aug. 12, 2024 (ECF No. 26)		
224.	Plaintiff's Written Discovery Answers and Admissions	EDMI 00002727–50	Aug. 12, 2024 (ECF No. 26)		
225.	Guidance from the U.S. Equal Employment Opportunity Commission (EEOC)		Aug. 12, 2024 (ECF No. 26)	Yes, it is inadmissible under Fed. R. Evid. 403 & 801	

The parties must disclose to opposing counsel any computer generated visual or animated presentation and all demonstrative exhibits they intend to use at least two business days before trial begins.

All exhibits will be published in electronic format. Counsel for the parties and their trial assistants must schedule a meeting with the Court's information technology staff to become familiar with the facilities available in the courtroom for publishing exhibits. The meeting is to be arranged through the Court's case manager.

The parties also must prepare exhibit books that include hard copies of all the exhibits to be offered in the case. The jury will have access to the exhibit book (culled to include only admitted exhibits) during their deliberations. The parties also must prepare two additional exhibit books for the Court.

The parties will each keep custody of their own admitted exhibits. At the conclusion of the proofs and before submission of trial exhibits to the jury, the parties will meet and confer to assure only the exhibits admitted at trial are turned over to the jury.

**X. Damages.**

The plaintiff claims:

- Damages for loss in compensation and future earnings equal to at least \$1,208,235.00.
- Non-economic damages, past and future, including damages for emotional distress, physical distress, mental anguish, physical anguish, loss of reputation, embarrassment, humiliation, and the physical effects associated with the defendant's conduct.
- Exemplary Damages.
- Punitive Damages.
- Pre-judgment interest.

**XI. Trial.** This matter will be tried before a jury. The parties estimate that the presentation of proofs will require approximately three days for the plaintiff and two days for the defendant.

**XII. Settlement.** The parties have conferred and considered the possibility of settlement, but the parties remain far apart. They held a mediation session with Mediator Dennis Barnes on September 26, 2024, and the parties were still very far apart. The parties engaged in further discussions at the final pretrial conference on October 15, 2024, where they narrowed their differences but still were not able to resolve the case.

**XIII. Pretrial Submissions.** Trial briefs must be filed on or before October 28, 2024.

**XIV. Juror Costs.** The parties and their counsel understand that, in accordance with LR 38.2, the expense to the United States of bringing jurors to the courthouse for a trial may be assessed to one or more of the parties or counsel if the jury trial has not begun as scheduled or the jurors are not used for that trial for any reason attributable to the parties or counsel. Also, it is the policy of the Judicial Conference of the United States that any last-minute continuances that result

in unnecessary juror fees and expenses be penalized by the assessment of costs against the responsible attorney or party. *See also* LR 40.2.

s/David M. Lawson  
DAVID M. LAWSON  
United States District Judge

Dated: October 28, 2024